

E-filing

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name BURLESON JESSE C  
 (Last) (First) (Initial)

**FILED**Prisoner Number D-90284

APR -7 2008

Institutional Address PO BOX 409020, IONE, CA 95640

**RICHARD W. WIEKING**  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

JESSE CLYDE BURLESON  
 (Enter the full name of plaintiff in this action.)

vs.

DIRECTOR, CALIFORNIADEPARTMENT OF CORRECTIONSAND REHABILITATION

(Enter the full name of respondent(s) or jailor in this action)

Case No. \_\_\_\_\_  
 (To be provided by the clerk of court)

**PETITION FOR A WRIT  
 OF HABEAS CORPUS (PR)**

Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

CALIFORNIA SUPERIOR COURT

SAN FRANCISCO

Court

Location

(b) Case number, if known 125509 ±

(c) Date and terms of sentence JULY 1, 1988, 15 to life; 10 yrs consecutive

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No       

Where?

Name of Institution: Mule Creek State Prison

Address: PO Box 409020, Ione, Ca 95640

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

15 yrs to life for second degree murder, 5 yrs for attempted murder, 3 yrs for GBI, and 2 yrs for gun use.

3. Did you have any of the following?

Arraignment:

Yes ☒ No ☐

Preliminary Hearing:

Yes ☒ No ☐

Motion to Suppress:

Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☐ No ☒

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐

(b) Preliminary hearing Yes ☒ No ☐

(c) Time of plea Yes ☒ No ☐

(d) Trial Yes ☒ No ☐

(e) Sentencing Yes ☒ No ☐

(f) Appeal Yes ☒ No ☐

(g) Other post-conviction proceeding Yes ☒ No ☒

8. Did you appeal your conviction?

Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 1988-89 Result: Affirmed sentence

Supreme Court of California Yes ☐ No ☒

Year: \_\_\_\_\_ Result: \_\_\_\_\_

Any other court Yes ☐ No ☒

Year: \_\_\_\_\_ Result: \_\_\_\_\_

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes \_\_\_\_\_ No ☒

(c) Was there an opinion?

Yes ☒ No \_\_\_\_\_

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes \_\_\_\_\_ No ☒

If you did, give the name of the court and the result:

\_\_\_\_\_  
\_\_\_\_\_

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No \_\_\_\_\_

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Superior Court of Conviction

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific):

a. 1AC

b. failure to instruct

c. Jury Misconduct

d. \_\_\_\_\_

Result: Denied Date of Result: ?

II. Name of Court: Court of Appeal, California

Type of Proceeding: Habeas

Grounds raised (Be brief but specific):

a. (Same as above)

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result: Denied Date of Result: ?

III. Name of Court: Cal. Supreme Ct

Type of Proceeding: Habeas

Grounds raised (Be brief but specific):

a. (Same as above)

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result: Denied Date of Result: ?

IV. Name of Court: Cal. Supreme Ct.

Type of Proceeding: HABEAS

Grounds raised (Be brief but specific):

a. The grounds raised in this

b. Federal Petition were most

c. recently raised in the Cal Supreme

d. Ct.

Result: Denied Date of Result: 01/23/08

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes \_\_\_\_\_ No ✓

Name and location of court: \_\_\_\_\_

#### B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: ( Please see attached [inserted] pages )  
6 Page 1 - 6 .

7 Supporting Facts: \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11 Claim Two: \_\_\_\_\_

12 \_\_\_\_\_

13 Supporting Facts: \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 Claim Three: \_\_\_\_\_

18 \_\_\_\_\_

19 Supporting Facts: \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25 All claims asserted herein were presented to  
26 the State's highest court.

27 \_\_\_\_\_

28 \_\_\_\_\_

## INTRODUCTION

Petitioner is technically procedurally barred under the AEDPA from filing any claims in challenge to his state convictions - this is his first federal habeas petition - however, the dismissal of his petition would produce a miscarriage of justice, because newly presented evidence demonstrates that petitioner is actually innocent of second degree murder (a malicious homicide) and attempted murder (attempted malicious homicide). And petitioner's claims should therefore be reviewed on their merits under the "gateway" standard. Griffin v. Johnson, 350 F3d 956 (9th Cir 2003).

## CLAIMS

Petitioner is actually innocent of second degree murder and attempted murder and suffers from an unconstitutional conviction because:

1) the trial judge failed to exercise discretion compelled by law to instruct the jury that it must consider the evidence presented that petitioner had acted without malice when deciding the material issue of malice aforethought.

2) trial counsel failed to render reasonably adequate assistance which directly resulted in petitioner being wrongfully convicted of homicide with malice, by failing to conduct an investigation of petitioner's desired viable defense, and by his unreasonable waiver of judicial duty to have the jury instructed to consider the mitigating circumstances evidence presented of unreasonable self-defense.

3) the jury was prevented from performing its fact-finding duty of considering the evidence that demonstrates petitioner had acted without the element of malice aforethought in unreasonable self-defense.

## FACTS

1. On Friday, September 25, 1987, 18 year old petitioner was taken into custody for a warrant in San Francisco due to his having unpaid traffic tickets. Petitioner was held in custody until the evening of the following day, Saturday, September 26, and was released on his own recognizance with instruction that he appear in court that coming Monday, September 28. (County Records)

2. Upon his release, petitioner learned that while he was in custody one of his associates had beaten up another young man named Dodie. And that Dodie's uncle, Charles "Little Charles" Harris (Harris), believed that petitioner was responsible for what happened to Dodie and was looking for petitioner.

3. Petitioner was involved in small time illegal drug peddling, as were some of his associates. Dodie had owed petitioner money, and Dodie had owed petitioner's associate money also. Dodie was assaulted by petitioner's associate which occurred in the presence of Dodie's girlfriend. Dodie's girlfriend was aware that Dodie had owed petitioner money, however, was unaware that Dodie had owed petitioner's associate money also. The girlfriend, assuming that petitioner must have sent his associate to beat up Dodie because of the unpaid debt, misinformed Dodie's uncle.



4. On Sunday night, September 27, petitioner encountered Harris on Leavenworth street between Turk and Eddy. Petitioner told Harris he had nothing to do with what happened to Dodie but Harris physically assaulted petitioner. During the incident petitioner picked up a pole to defend himself and Harris's girlfriend, Christine Farrard (Farrard), jumped in and petitioner pushed her back by her face. Harris threatened to have petitioner killed, then Harris left the area with Farrard. (Exh. A1 - A6)

5. Later that evening Dywayne Richrdson (Richardson, a friend of petitioner who was initially taken into custody as a suspect) informed petitioner that he believed Mark Ellis (Ellis, attempt victim) and the men with Ellis; Clarence "Popeye" Stevenson (Stevenson, deceased victim), Jesse James Jackson (Jackson, eyewitness and the self-alleged god-son of Stevenson), Johnny Reed (Reed, witness), and Gary Davis, were coming to kill petitioner for Harris.

6. Richardson told petitioner Harris had returned and that he saw him give a gun to Ellis. He said that the exchange took place on Eddy street between Leavenworth and Jones, and that he should watch his back. (Exh. A7 - A10)

7. Petitioner was familiar with the men from around the neighborhood and became afraid for his life and went to his apartment to arm himself. Petitioner resided with his girlfriend and their 10 month old daughter at the Piedmont Apartments at 270 Turk street between Leavenworth and Jones, just parallel to and one block over from Eddy street where Richardson told him the men were at. From his apartment petitioner telephoned his friend Bencel Bautista (Bautista) to let him know that he was in trouble. Bautista told petitioner he was going to his girlfriend's house to attend a birthday party for his girlfriend's sister and that he would drive through Turk street on his way there. Petitioner said he would wait for him outside.

8. Petitioner waited for Bautista at the north-east corner of Turk and Leavenworth. Bautista's car arrived and stopped in the bus zone across the street at the north-west corner of Turk and Leavenworth. Petitioner went to the car and spoke to Bautista. He told Bautista that a contract had been made to have him killed and that the men were coming for him. He told Bautista he was thinking of moving back to Texas and live with his father to get away from all the danger he was in. Petitioner had recently moved back to California from Texas the year before, in 1986. Petitioner asked Bautista to stay there with him but Bautista told petitioner he would come back because he had to go to his girlfriend's house first. His girlfriend, Antonique Shelton (Shelton, witness) was with him inside the car. (RT 329-332, 628-632)

9. When Bautista left petitioner went back to his apartment and would go back outside periodically checking for Bautista's car. Petitioner would walk to the north-east corner of Turk and Leavenworth to look out for Baustist'a car. Once while outside petitioner noticed that Ellis and his crew had congregated together across the street at the north-west corner of Turk and Leavenworth. Then at approximately 11 p.m. petitioner encountered Ellis and his crew directly outside the entrance gate of his apartment building at 270 Turk. Petitioner panicked, drew his gun, and started firing. Petitioner shot Ellis at point blank range and fired rounds at the other men as they fled, hitting Stevenson twice, one shot fatally wounding him. Petitioner then fled himself. (Ex. A5-A6)



10. The next morning, Monday, September 28, petitioner kept his court appointment at 850 Bryant Street and was taken into custody when he appeared there for the traffic related matters. He was advised by the attorney appointed to represent him on the traffic issues to not give any statements regarding the shooting incident. Petitioner followed the attorney's advice and gave no statement to police.

11. Petitioner later hired a criminal defense attorney. Petitioner informed defense counsel of everything that took place and said he would like to testify on his own behalf so that he could explain what had happened. Counsel told petitioner not to testify because he was going to argue a case of misidentity because he didn't believe there was enough evidence to prove that he did the shooting. Counsel told petitioner that he based his decision on his review of the police reports containing the statements of all potential witnesses. He said the witness statements were inconsistent and inconclusive as to who or what they saw. And that no one clearly identified him. Counsel said he didn't need to interview all of the persons that could corroborate or substantiate what petitioner had told him regarding his belief in the need to act in self-defense because he <sup>wasn't</sup> going to need them. (Exh. A11, A13 - A17)

12. Counsel did not interview Jackson either, the alleged godson of the deceased victim who was standing with Ellis and Stevenson when the shooting occurred. Counsel said he assumed that Jackson would not be a witness since his initial statement to police was that his back was turned when the shots were fired and that he didn't see who did the shooting. (Exh. A12, RT 546 - 549)

13. At trial the prosecution presented the testimony of Bautista and Shelton, and of the homicide detective (Inspector Edward Kenney) who interviewed them, to recount the conversation petitioner had with Bautista on the night of the shooting. The prosecution argued that petitioner had a "motive" for shooting Ellis and Stevenson because he believed that they were supposed to kill him in the fulfillment of a contract made against him. (RT 329-332, 628-632)

14. The prosecution also presented a jailhouse informant, Don Carlos Rhodes (Rhodes), to testify that he heard petitioner telling someone in the county jail that he shot "Popeye" (Stevenson) because he believed Stevenson was going to try to kill him. The prosecution argued that the basis for petitioner's actions was his belief that Ellis and Stevenson were hired to kill him but that petitioner's belief was mistaken as to Stevenson and Ellis. (RT 102-103, 501-503, 669-672, 696-697)

15. Ellis testified that the only reason he was standing at 270 Turk street was because Reed lived there and Stevenson was buying a hyperdermic syringe from Reed. Ellis testified that he was with Reed and Reed went inside to get the needles for Stevenson. Ellis testified that he did not personally know petitioner and that he did not know Stevenson either and did not know why petitioner would want to shoot him other than mistaking him for being someone else. (RT 146-150, 186-187)

16. The prosecution also presented the testimony of Jackson, Reed, Bruce Riggs (Riggs), and Eileen Nicholson (Nicholson), to identify petitioner as the shooter. However it was Jackson's testimony that compelled the result of positive identification. Jackson

testified that he was standing next to Ellis: "When he (petitioner) came out of the Piedmont Apartments, he had a gun and he said, "You motherfucker," bam and shot Mark (Ellis)". (456-472)

17. Reed testified that he was about to exit the building when he heard shots outside and when he came out he saw Ellis on the ground and petitioner running away with a gun in his hand. Riggs testified that he was across the street when he saw petitioner firing a gun at two men who were running in his direction. And Nicholson testified that she heard the shots and then saw petitioner pass by her with a gun in hand. (RT 267, 274 (Riggs), 354-355 (Reed), 418 (Nicholson).)

18. Defense counsel attacked these testimonies on the inconsistencies in their descriptions of what the petitioner was wearing; hat versus no hat, glasses versus no glasses, estimated age of petitioner versus actual age, estimated height and size of petitioner versus actual height and size, description of gun type (automatic versus revolver).

19. At the conclusion of the presentation of evidence, and outside the presence of petitioner, the trial judge inquired whether counsel was willing to "waive" the trial court's consideration of giving lesser included voluntary manslaughter offense jury instructions. And counsel so agreed to waive the court's function. (RT 639-640)

20. The jury received only murder instructions, that is, malicious homicide, with an instruction that it may consider petitioner's "motive" only as it related to whether petitioner's conviction should be of the first or second degree; both being malicious homicides.

21. No instruction was given to inform the jury that it may consider petitioner's "motive" as it related to the element of malice; that is, no instruction was given to inform the jury that in order for it to find the element of malice in the case that it had to find, first, that petitioner did not act in unreasonable (or mistaken belief) self-defense.

22. The jury resolved the identity issues against petitioner and convicted him of second degree murder and attempted murder.

23. At sentencing the trial judge noted petitioner's motive as a mitigating factor, however, no argument was made by counsel that petitioner's convictions should be reduced to non-malicious homicide because of it. (RT 765)

#### ARGUMENT

A. Petitioner asserts that due process required the jury to have been instructed to consider petitioner's belief as it related to the element of malice and that had the jury been allowed to consider petitioner's belief it would have exonerated him of malicious homicide, finding him guilty of no greater offense than voluntary manslaughter (non malicious homicide).

California law compels trial courts to instruct a jury that evidence presented that a defendant may have acted in unreasonable self-defense must be disproved by the prosecution in order for the element of malice to be established. *People v. Flannel* (1979) 25 C.3d 668; *People v. Rios* 97 CR2d 512, 520-521 (Cal. 2000); CALJIC 5.17, 8.40, 8.50.

The trial judge in this case committed an abuse of discretion by failing to exercise the discretion compelled by law to consider instructing the jury that it must consider the evidence presented that petitioner had acted without malice in unreasonable self-defense when deciding the material issue of malice aforethought. (RT 639-640)

Due process dictates that when a judge fails to exercise a discretion compelled by law that a fair hearing has been denied and the judgment must be reversed or remanded.

In order to establish malice where mitigating circumstances have been presented that tend to negate malice, due process requires the prosecution to disprove the mitigating circumstances. This was not done and the failures violated federal due process. *Mullaney v. Wilbur* (1975) 421 US 684, 704; *In re Winship* (1970) 397 US 358, 364; confer *People v. Rios*, supra, 97 CR2d at 520.

In the absence of informing instructions the jury was prevented from performing its fact-finding duty - on deciding the critical and essential element of malice under the required standard of proof. Also, the lack of instruction relieved the prosecution of its burden to prove the malice element under the required standard.

Furthermore, the state concedes the point that this was only a case of unreasonable self-defense, as the prosecutor exhorted at trial:

"the evidence will show that the defendant thought they were two hitmen or two people from St. Louis who were out to get him, to kill him" (RT 103, Prosecutor's opening statements to jury)

"Is there motive in this case? Abundant motive and it supplies the whole basis to why this occurred... The defendant thought this was one of the guys that was from out-of-town." (RT 697, Prosecutor's closing argument to jury)

Based on the evidence never considered by the jury on the material issue of malice, and the prosecution's case-in-chief, petitioner is actually innocent of malicious homicide under California law.

B. Petitioner asserts that counsel's waiver (of judicial duty) was an unreasonable and incompetent act in the context of this case, since not having the jury instructed to fully consider the prosecution's case (on an essential element) was inconsistent with due process, denying petitioner a fair hearing on all material issues raised by the evidence, and would not have affected counsel's argument on the identity issues.

C. Counsel's failure to investigate, counsel's pre-investigative decision to present a misidentity defense, and his unreasonable waiver at trial, contributed to, if not directly caused, petitioner's wrongful conviction.

It was "unreasonable" for counsel to rely on police reports (*Lord v. Wood*,

184 F.3d 1083. 1084 (9th Cir 1999)) and counsel's decision to present a misidentity defense without first conducting an adequate investigation of the viable defense of unreasonable self-defense constituted deficient performance. *Rios v. Rocha*, 299 F.3d 796 (9th Cir 2002).

Counsel failed to interview Shanelle Brown, Dywayne Richardson, Shante Spruell, and even Bautista and Shelton.

However, it was counsel's failure to interview Jackson, the key eyewitness for the prosecution, that constituted a deficiency in performance that ranks highest in prejudice in petitioner's view. See *United States v. Tucker*, 716 F.2d 576, 584 (9th Cir 1983)

Counsel had assumed that Jackson would not testify based on the police report indicating Jackson had initially told police that his back was turned. However, Jackson testified that at some point he did inform the authorities that he witnessed the shooting. (RT 472) Jackson was a major part of the prosecution's case, which without Jackson's testimony, counsel's misidentity theory had a chance.

However, counsel relied on the police report of Jackson's initial statement to assume Jackson would not come forth. Then when Jackson testified that he witnessed the shooting, counsel was unprepared and his misidentity defense was severely compromised. Counsel was left with no alternative but to continue with his now obviously weak misidentity argument, because not only did he not see Jackson's testimony coming, but he had failed to interview the persons who could have supported the more viable defense of unreasonable self-defense in the event he needed to change his defensive strategy. However, counsel failed to adequately prepare for this murder trial.

Even without that being the case, the prosecution's case still supported a claim of unreasonable self-defense when it presented that petitioner had only acted upon his mistaken belief in the need to defend himself from Ellis and Stevenson. However, when the opportunity arose for counsel to have the jury instructed to consider the lesser offense of manslaughter - in the event the jury had decided to reject the identity issues raised by counsel (which it did) - counsel decided to waive that opportunity away for no foreseeable good reason by his acquiescence to waive the court's duty to instruct the jury on the lesser offense categories of manslaughter.

Petitioner submits that since none of the unreasonable self-defense evidence was ever considered by the jury on the relevant issue of malice, that the evidence of petitioner's belief and the circumstances surrounding it constitutes "newly presented evidence" for federal habeas review. See, *Griffin v. Johnson*, 350 F.3d 956.

#### CONCLUSION

Petitioner requests that his case, evidence and claims, be reviewed under the standard of actual innocence to overcome any procedural default; that he be afforded an evidentiary hearing on any disputed issues of material fact; that he be appointed counsel, if deemed necessary; and that relief be granted in the form of either the reversal of his convictions, or an order entered modifying petitioner's convictions from murder and attempted murder to voluntary and attempted voluntary manslaughter.

1 List, by name and citation only, any cases that you think are close factually to yours so that they  
 2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
 3 of these cases:

4 Griffin v. Johnson, 350 F3d 956 (9th Cir 2003); Mullane v. Wilbur (1975) 421  
 5 US 684; In re Winship (1970) 397 US. 358; People v. Rios, 97 CR2d 512,  
 6 (Cal. 2000); People v. Flannel, 25 C-3d 668 (Cal. 1979); CAL JURY INSTRUCTIONS  
CALJIC 5.17, B.40, B.50.

7 Do you have an attorney for this petition?

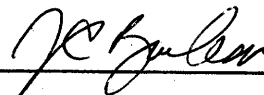
Yes \_\_\_\_\_ No ☒

8 If you do, give the name and address of your attorney:

9 \_\_\_\_\_  
 10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
 11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 Executed on March 22, 2008

13 Date

14   
 Signature of Petitioner

15  
 16  
 17  
 18  
 19  
 20 (Rev. 6/02)

**EXHIBITS** A1-A17



Thurs. Oct 87

0810.

Interview with

CHARLES HARRIS . AKA LITTLE CHAS.

NM. 6/10/59 3505 Lombard #31.

No Phone in Room.

Stated that he was not involved in shooting,  
nor was he in the area when it happened.

He was involved in a fight 4 or 5  
hours earlier with Jessie.

Jessie had a fight a few days earlier  
with Chas Harris' nephew Derrick Harris.  
This fight was over the girl that Derrick  
Harris is dating (~~Christina~~<sup>Theresa</sup> HF - 16-17 yrs thin).  
He beat Derrick up and told him not to  
come down to the T/t again.

Charles Harris got into an argument with  
Jessie over this and in the argument Jessie  
slapped his woman (Christine Farnard). She got  
slapped because she was trying to take a  
stick away from Jessie as he was going to  
hit Chas. Harris. - Jessie backed down because  
Jason (NM 16-17 BB) was behind him, backing  
him up. - Then it was over with. Chas.  
Harris and Jessie talked and Chas Harris &  
Christine left and didn't come back to the

T/2 that night. Ches Harris does know Popeye but he doesn't know or recognize Mark. I know Popeye and there is no way anybody could mistake me for him. -

Found out about the killing from his woman Christine who woke him up in the night and told him. She found out from his family who saw it on the news at 11 or 12. - Denied that he had payed anyone any money to "take care" of Jessie. - Said that they were more or less friends and he would have no reason to do that.

Gerry

7 Oct 87  
5:20 pm.

Interview @ Christine Farrard.

WFA 19 yrs. 11/19/67

2505 Lombard #31. 921 2505

or 1317 Gateview Ave; Treasure Island.

@ mother's <sup>boy friend</sup> - SETSUKO HOY - no phone.

mother is NORIKO ROWLING

Notes that she was down in the T/L earlier in the day but not during the shooting. There was a fight. She was about to jump on her boyfriend Chas. Harris. & she saw Jessie come from around the corner with a pole in his hand and use it like a baseball bat against her boyfriend - She went over to Jessie and tried to get the pole away from him and Jessie slapped her across the face. Chas Harris got mad and he and Jessie had words and then they left the area. They didn't come back to the T/L that night at all.

13 Oct 87.

Interview with  
Tracy Kelley.  
240 Turk St #1003.

States that at the time of the shooting she was just entering her apt #1003 and heard the shots; she then went to the window and looked out; she was with her friend Lisa Atkins.

She heard later "on the street" that Jessie did it. She was shocked; Jessie is a good friend of hers. - so is his girl friend Alice; she has never seen him with a gun.

- Regarding a fight earlier that afternoon - "Dodie" (her boyfriend - 1166 Pine #2, #4 "Kilo" were fighting on the corner of Turk & Leavenworth. - Kilo lives somewhere out on Fulton St. She doesn't know what that fight was about. It wasn't over her.

Shante D. Spruell

10-7-87

NF 9-11-69

5<sup>25</sup>pm

237 Leavenworth #105 441-4644

On the night Poye got shot Jesse and "Little Charles" got into a fist fight at about 9<sup>pm</sup>. "Kilo", who is a friend of Jesse's, hit "Dodie" and Dodie is Little Charles cousin. Dodie blamed Jesse for Kilo having hit <sup>him</sup> ~~her~~. Later, about 10<sup>pm</sup>, I saw Jesse at the corner of Turk & Leavenworth. He had his hands in his pockets, he was pacing back and forth and he was nervous. I asked him what was wrong and he told me "these niggars are going to kill me". He pointed across the street to a group of people that included Mark and "JJ". Jesse then left and about 15 minutes later while I was in front of my building I heard shots. Little Charles and Dodie (NM 19, 5'7, 125) are from St. Louis. Two or three days after the shooting his friend, Carl, NM 17 yrs., told me that Jesse thought that Little Charles and Kilo

had hired some guys to shoot him. Carl also told me that Jesse thought that Mark was one of the guys that had been hired to shoot him.

Carl also quoted Jesse as saying that he shot Lopez because he was standing near Mark and that it was an accident. Carl lives in the Laguna Hills McAllister area. Kilo's real name is Kennen and he was arrested a couple of days ago in front of the Jefferson for selling hubcaps.



9-28-87  
Taped

Dywayne D. Richardson

NM 10-2-62

620 Eddy #8

673-4250

SF # 410304

Originally detained by officers Martin #1157  
and Razona #1216

RICHARDSON, DYWAYNE D.

NM, 10-2-62

SF # 410304

5'8", 145, BRO. BRO.

10-35.

620 Eddy #8

TAN RACCOON TYPE HAT

PURPLE COLORED JACKET

GREEN WITH WHITE & BLACK  
STRIPES IN BACK PANTS.

BLK. TENNIS SHOES.

3A31 MARTIN #1157  
RAZONA #1216

INCIDENT NO. 8710		Case 4:08-cv-01853-SBA Document 1		DOMESTIC VIOLENCE STATEMENT TAKEN YES NO		ASSIGNED RECORD ROOM USE ONLY	
TYPE OF INCIDENT		M.O. CODE		UNIT RPTG		DATE(S) & TIME(S) OF OCCURRENCE	
ASSAULT W/ DEADLY WEAPON (GUN) / HOMICIDE				3A1		9-27-87, 2300	
LOCATION OF OCCURRENCE		LOCATION SENT TO		TYPE OF PREMISE			
270 TURK		SAME		PUBLIC STREET			
REPORTING OFFICER		REPORT APPROVED BY		STAR		HOW CLEARED (RECORD ROOM USE ONLY)	
STOCKER		2196 SGT. [Signature]		742			
CTIM CODES: V - VICTIM; R - REPORTEE; W - WITNESS; P - PARENT; N - NOTIFY; F - FOUND; M - MISSING							
CODE NAME (LAST, FIRST, MIDDLE)		RACE		SEX		DOB OR AGE	
V1 STEVENSON, CLARENCE		W (N) I C J OTHER UNK		M		10-12-31	
RESIDENCE ADDRESS		BUSINESS ADDRESS		VICTIM OF CRIME NOTIFICATION			
324 HAIGHT				YES NO STAR:			
OTHER INFORMATION / MISSING PERSON INFORMATION		REPORTER FOLLOW-UP NOTIFICATION		YES NO			
DECEASED							
CODE NAME (LAST, FIRST, MIDDLE)		RACE		SEX		DOB OR AGE	
V2 ELLIS, MARK		W (N) I C J OTHER UNK		M		8-18-58	
RESIDENCE ADDRESS		BUSINESS ADDRESS		VICTIM OF CRIME NOTIFICATION			
1207 SUNNYDALE				YES NO STAR:			
OTHER INFORMATION / MISSING PERSON INFORMATION		REPORTER FOLLOW-UP NOTIFICATION		YES NO			

ISPECT CODES: A - ADMONISHED; B - BOOKED; C - CITED; D - DETAINED; E - EXONERATED; S - SUSPECT; X - DIVERTED							
CODE NAME (LAST, FIRST, MIDDLE)		RACE		SEX		DOB OR AGE	
D1 RICHARDSON, DWAYNE		W (N) I C J OTHER UNK		M		10-2-62	
HEIGHT		WEIGHT		HAIR COLOR		EYE COLOR	
5-8		145		BLK BLN (BRO) GRY SANDY		BLK BLU (BRO) GRY GRN	
RED BALD WHI UNK		HAZ MIXED UNK		ADDRESS			
WARRANT # CITATION #		BOOK / CITE SECTION					
WHERE BOOKED		BOOK CITE APPROVED BY		STAR		I.D.# (SOC. SEC., OP. LIC., ARMY SER., ETC.)	
						SF # 410304	
WHEN & WHERE CITED TO APPEAR, OTHER INFORMATION / ADDITIONAL DESCRIPTION OF SUSPECT							
DETAINED AT CENTRAL STATION, INTERVIEWED AT HOMICIDE BY INSP. ERDELATZ							
VEHICLE CODES: F - USED FELONY; U - USED OTHER; S - STOLEN; R - RECOVERED; B - BOOSTED; D - STRIPPED; T - TOWED; P - STOLEN PLATES; L - LOST							
CODE		LICENSE PLATE NO.		STATE		YEAR	
CONDITION WHEN RECOVERED:		1 APPARENTLY DRIVEABLE		2 ENGINE & TRANSMISSION MISSING		PLATES MISSING	
3 ENGINE MISSING		4 TRANSMISSION MISSING		5 BURNED		6 WRECKED	
7 OTHER STRIPPED		1		2		NONE	
OTHER INFORMATION		TOW CHECK (NAME)		WAIVER SIGNED		YES NO	

PROPERTY CONDITION CODES: S - STOLEN; R - RECOVERED; L - LOST; E - EVIDENCE; F - FOUND; P - PROPERTY FOR SAFEKEEPING; D - DAMAGE									
CODE		PROPERTY DESCRIPTION						VALUE	
F/E1		1 BALLOON CONT. SUBSTANCE							
F/E2		NUMEROUS PAPER BUNDLES CONT. SUBSTANCE							
CODE		PROPERTY DESCRIPTION						VALUE	
CODE		PROPERTY DESCRIPTION						VALUE	

LOW INCLUDE ADDITIONAL HEADING, VICTIMS, SUSPECTS, VEHICLES AND/OR PROPERTY BEFORE BEGINNING NARRATIVE.

S2: NM, 20-25 YRS, 5-4, 170, BRN, BRN, DARK COMPLECTED,  
BLUE JEANS, BLACK JACKET

NARRATIVE:

OFF. NEWMAN #1315 AND I RESPONDED TO THE ABOVE PLACE AND TIME

REGARDING A CALL OF A SHOOTING. UPON ARRIVING, WE DISCOVERED

(1) STEVENSON LYING AT THE CORNER OF TURK AND LEAVENWORTH, WITH MULTIPLE GUNSHOT WOUNDS. 3E4, OFF. LEVINE AND HOUSEHOLDER, AND

AMBULANCE UNIT 1H81, STEWARD HAGOPIAN #389, WERE ALREADY AT THE SCENE.

(V2) ELLIS WAS LYING ON THE SIDEWALK AT 270 TURK WITH A GUNSHOT

WOUND TO HIS JAW; AMBULANCE UNIT 1H83, STEWARD PARCUFF #506, WAS

TREATING HIM. 3A200, SGT. VERASQUEZ #792, ALONG WITH OFF. BARRY #2093,

ARRIVED AND TOOK CHARGE OF THE SCENE. THE AMBULANCES TRANSPORTED THE

TWO TO MEM. THE CRIME SCENES WERE PRESERVED.

(W3) COOKS FLAGGED DOWN UNIT 3793, OFF. MCKENNA #1512, AND

STATED THAT HE HAD BEEN WALKING N/B ON HYDE TOWARD TURK WHEN HE

HEARD APPROX. 5 GUNSHOTS. SHORTLY THEREAFTER, HE SAW (D) RICHARDSON

AND ANOTHER SUSPECT <sup>RUN</sup> PAST HIM FROM THE CORNER OF TURK AND LEAVENWORTH.

ON TELLING THIS TO OFF. MCKENNA, COOKS SAW THAT RICHARDSON WAS NOW

STANDING ON THE NW CORNER OF TURK AND LEAVENWORTH. 3A31, OFF. MARTIN AND

WAGONA, DETAINED RICHARDSON AND TRANSPORTED HIM TO CENTRAL STATION.

RICHARDSON WAS LATER INTERVIEWED BY INSPECTOR ERDELATZ #92 (5H92).

AT THE CRIME SCENE, OFF. SCHENSTEIN #176 (CRIME LAB) RESPONDED

AT 0010 HRS. INSPECTOR ERDELATZ <sup>(5H9)</sup> ARRIVED AT 0015 HRS AND TOOK CHARGE OF

THE SCENE. OFF. PETER #127 (PHOTO LAB) ARRIVED AT 0100 HRS.

AT MEM, DR. LEVINE TREATED ELLIS. DR. PABARDCHAK TREATED

STEVENSON AND FOUND (F/E1) IN STEVENSON'S MOUTH AND (F/E2) IN HIS

RECTUM. THE ITEMS SEIZED, BOOKED AND HAND-CARRIED TO 850 BRYANT

BY OFF. BARRY. APPROXIMATELY 9-28-87, 0015 HRS, DR. PABARDCHAK PRONOUNCED

DEATH ON STEVENSON.

W3: COOKS, JEROME NM 2-14-SS, MOTEL MOTELS

5H200

5/528

01001/1

PAGE 04/11 OF 2

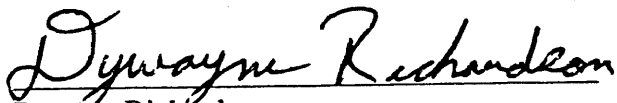
ICSS ENTRY BY:

## DECLARATION OF DYWAYNE RICHARDSON

1. I, Dywayne Richardson, currently reside at 2257 Bridle wreath Lane LV. NV
2. On September 27, 1987, I watched Charles Harris aka Little Charles assault Jesse Clyde Burleson on Leavenworth Street.
3. During the assault, I saw Jesse pick up a steel pole in defense of himself against Charles.
4. Before leaving with his girlfriend, Christine Farrard, Charles threatened Jesse that he was going to kill him.
5. My understanding was that this incident happened because Charles' nephew Derrick Harris aka Dodie was beaten up by someone the day before and Charles believed that Jesse was the person who did the beating.
6. On September 27, 1987 after the assault on Jesse, I saw Charles talking with several men on Eddy and Leavenworth.
7. It appeared to me that Charles gave a handgun to one of the men.
8. The group of men included Jesse James Jackson aka JJ and Clarence Stevenson aka Popeye.
9. It was my belief that Charles was going to have these men kill Jesse.
10. Shortly thereafter I told Jesse what I had seen and that I believed that they were coming to kill him.
11. I am willing to testify to the foregoing before a court of law.

I declare under the penalty of perjury that the foregoing is true and correct.

Signed this 26 day of January, 2004 at Las Vegas, Nevada.

  
Dywayne Richardson

Law Offices of  
KENNETH M. QUIGLEY  
650 Fifth Street, Suite 502  
San Francisco, California 94107  
(415) 546-7771

June 19, 1993

Mr. Jesse C. Burleson  
D-90284  
P>O> Box 29; B1-110  
Represa, CA 95671

CONFIDENTIAL  
*Legal Mail*

Dear Mr. Burleson:

I have received your letter of 6/9/93 and want to answer it fully. I also want to give you some advice: if you think that I have done something to represent you ineffectively, get a lawyer and pursue it through the courts. As I have said many times, if I have actually done something to harm your case I will admit it. My reputation will not be destroyed, since I am well known for doing a good job and defending my clients vigorously. I will do whatever I can within the bounds of the law to help you out of this mess. I was committed to doing that from the beginning and I still am committed to that. You should know that fact already, since I did what I could on your habeas corpus proceedings for several years, including helping you communicate with attorneys whose job it was to attack me if they could, helping you get in contact with investigators, etc.

Obviously, you will not want me as your trial lawyer again should your case be reversed. I understand and accept that, despite my desire to win what I think is a winnable case. I wanted to win your case, and did the very best I could under the circumstances.

Let me answer some of your questions. First, I would do some things differently if I had the opportunity to try the case over again. First and foremost, I would put you on the stand. Whether or not to take the stand is your choice, but of course I take an active role in advising you. I strongly suggested last time that you not take the stand, because I thought we had a better chance of winning the case that way. You agreed, and did not take the stand on my advice. With the benefit of hindsight, we now have re-examined that decision rather extensively. That is understandable, but does not change the situation as it existed at the time.

9-28-87

0130

Jessie James Jackson

MM 10-B-54

324 Haight 863-8193

I am Clarence Stevenson's nephew. Tonight I was w/ him when the shooting occurred. Just before the shooting he was talking w/ four guys. My back was turned when I heard shots. I turned and saw Mark fall. I ran away at that time. I had seen the four guys in the area before. They were black and one of them is "Jessie". He drives a black Cad, Seville. A Gary was also there. Jessie was one of those I saw run away from the shooting scene.



CENTRAL STATION  
SEP 28 1987

2300-0700 (3731)

SHAWELLE BROWN  
NF 12878  
Q 1975 OCCURRED WITH  
BUE OAKLAND  
STUDENT AT  
OAKLAND TECH  
MCLENNAN (WORK)  
BENTON AVE  
BENTON  
624-7645

In front of  
2700 Tuck St  
heard (saw) 11/11/74  
& other person  
talking about  
spinning about  
young man  
yesterday -  
then I saw heard  
one who I saw  
into 2700 Tuck  
less than one  
minute later, I saw  
heard 3 shots  
I went outside  
to see who in  
front of 2700

P.O. Box 1160  
Pacifica, California 94044  
650.355.1321 TEL  
650.355.3790 FAX  
JfraPI@aol.com Email  
License #15379

March 21, 2002

Jesse Clyde s/c Burleson  
CDC# D-90284  
Mule Creek State Prison  
P.O. Box 409000  
Ione, CA 95640

Re: Habeas Petition Investigation

Dear Mr. Burleson:

The following is my report of investigation regarding the captioned matter pursuant to your instructions.

Officer Kevin Martin

On October 1, 2001, at approximately 9:15 PM, myself and attorney Diana Frappier met with and interviewed San Francisco Police Department Officer Kevin Martin at Southern Station, 850 Bryant Street. The purpose of the interview was to ask Officer Martin his recollection of a homicide investigation (Incident No. 871086952) in which he had been one of the responding officers. I also asked him to review the attached hand-written notes identified by the stamp "CENTRAL STATION SEP 28 1987".

After reviewing a copy of the attached notes, Officer Martin stated that the notes were his handwriting, although he had no specific recall of interviewing the witness Shanelle Brown identified in the notes. He said he had a vague recollection of someone being shot in the jaw. After reviewing the Incident Report, Officer Martin said that E.M. Kenney and Edward Erdelatz were the homicide detectives on the case, and that he (Martin) would have turned over his notes to the those detectives.

During the interview, Officer Martin excused himself to go call his partner during the 1987 investigation, Inspector Ray Ragona. Martin said that Ragona did not recall Shanelle Brown or the investigation. Martin said that he kept all his notes and he would check them to refresh his memory.

On October 30, 2001, I telephoned Officer Martin and asked if he had been able to review his notes. He said he had looked in his notes but could find nothing about this particular case. I asked if he would sign a declaration stating that the attached notes were his. He said he would have to decline unless he was ordered to so.

Habeas Petition Investigation

March 21, 2002

Page 2

Inspector Ray Ragona

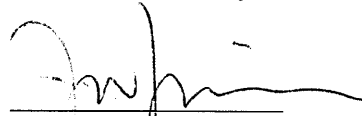
I left two telephone messages for Inspector Ray Ragona but I never received a call back from him.

Maggie Richards

I interviewed Maggie Richards and enclosed is the original declaration she reviewed and signed.

I declare under the penalty of perjury and the laws of the State of California and the United States that all of the foregoing is true and correct

Executed on the 21<sup>st</sup> day of March 2002 in Pacifica, San Mateo County, California.



Jon Frappier

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA )

COUNTY OF San Mateo )

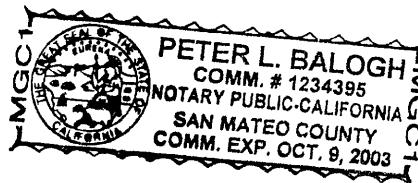
On 3/2/02 before me, Peter L. Balogh, Notary Public  
 DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Jon Frappier

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)  
 NOTARY PUBLIC SIGNATURE



## OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT Habeas Petition Investigation

DATE OF DOCUMENT 3/2/02 NUMBER OF PAGES 3

SIGNER(S) OTHER THAN NAMED ABOVE None

SIGNER'S NAME \_\_\_\_\_ SIGNER'S NAME \_\_\_\_\_

RIGHT THUMBPRINT

RIGHT THUMBPRINT

### DECLARATION OF MAGGIE RICHARDS

I, Maggie Richards, am a California licensed investigator (P.I. #9836) and owner/operator of Richards & Associates for the past nineteen years.

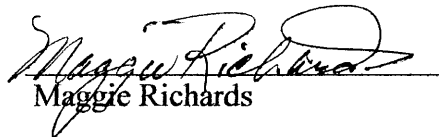
In 1987 I provided investigative services for Kenneth M. Quigley, Esq., Counsel for defendant Jesse Burleson regarding a 1987 San Francisco homicide. During that same time I provided investigative services to a number of other civil and criminal counselors.

This work was provided almost fifteen years ago and so my recollection is necessarily hazy respecting the specifics of the case. The file no longer exists as the matter was both adjudicated and appealed long ago. The file was retained for ten years, which is what limited space allows.

As recollection serves there were a number of individuals who were interviewed, either by the attorney, or by myself for the attorney, respecting this matter. The name Shanelle Brown is vaguely familiar. I do not believe I ever interviewed her. Had I been asked to do so, I would of course have so done.

I declare under penalty of perjury and the laws of the State of California that all of the foregoing is true and correct.

Executed on the 30<sup>th</sup> day of January 2002 in Daly City, San Mateo Co., California.

  
Maggie Richards

*Excerpt of Record*

*Reporter's Transcript (RT)*

**EXHIBIT** \_\_\_\_\_



1 MAY 26, 1988

2  
3 THE COURT: All right, the record should reflect the  
4 defendant is present, so are the attorneys, so are the  
5 jurors.

6 Ladies and gentlemen, we have reached that stage of  
7 the criminal proceedings where each side has the opportunity  
8 to address you in opening statements.

9 Like I have indicated yesterday, statements by  
10 attorneys is not evidence because the statement by each side  
11 is what they expect to prove.

12 Of course they are contesting each other as to what  
13 the state of the facts are.

14 And since their statements are not as a result of a  
15 stipulation or an agreement to the existence of any facts,  
16 anything they say in opening statements is evidence of  
17 nothing but it is used as an opportunity for them to tell you  
18 what they expect to prove.

19 You wait until you hear the evidence and determine  
20 what has been proved or not been proved.

21 All right, with that in mind, counsel, do you wish to  
22 make an opening statement?

23 MR. CUMMINS: Yes, Your Honor, thank you.

24 \*OPENING STATEMENT BY MR. CUMMINS:

25 Ladies and gentlemen, I am going to make a relatively  
26 short opening statement to you to outline the facts as I  
27 believe the evidence will be presented to you.

28 In this case where the charge is murder and attempted

1 murder and the defendant is accused as being the perpetrator  
2 of those crimes, this is what the evidence will show.

3 You all know it was on a Sunday night, September 27 of  
4 1987. It was about 11:00 o'clock. It took place at 270 Turk  
5 Street in San Francisco which is Turk near Leavenworth, might  
6 be referred to as the capital of the Tenderloin district in  
7 San Francisco.

8 And on that particular night Popeye, Clarence <sup>Stephenson</sup> Jackson,  
9 was shot and killed. He was shot twice. The evidence will  
10 show he was shot by the defendant.

11 Mark Ellis who was also standing there in front of the  
12 Piedmont Hotel or Piedmont Apartments was shot by the  
13 defendant through the neck. It went up through the area,  
14 went right through his neck, missed the spinal column. He  
15 had to undergo surgery.

16 The bullet remained in his neck and back of his neck  
17 for many months and it was recently removed.

18 The evidence will also show that in a sense in the  
19 tragedy of this particular case that the defendant shot the  
20 wrong people, because the evidence will show that the  
21 (defendant thought they were two hitmen or two people from St.  
22 Louis who were out to get him, to kill him,) and the defendant  
23 was mistaken as to these two gentlemen) because Popeye  
24 Clarence <sup>Stephenson</sup> Jackson was a man in his fifties, he was unarmed as  
25 was Mark Ellis. They happened to be standing there in front.  
26 of the hotel at that time.

27 The evidence will show that Clarence Stephenson was a  
28 drug addict, perhaps a small time drug salesman and as I

1 THE COURT: All right, the record should reflect the  
2 defendant is present, so are the attorneys, so is the jury.

3 Next witness?

4 MR. CUMMINS: Yes, Your Honor.

5 THE CLERK: Please take the stand.

6 (WHEREUPON\* MARK ELLIS was called as a witness by the  
7 People, was duly sworn and testified as follows:)

8 THE WITNESS: I do.

9 THE CLERK: Please state your name for the record.

10 THE WITNESS: My name is Mark Ellis.

11 THE CLERK: Last name?

12 THE WITNESS: Ellis.

13 THE CLERK: E-L-L-I-S?

14 THE WITNESS: Yes.

15 THE CLERK: Thank you, please be seated.

16 \*Direct-Examination

17 MR. CUMMINS: Q. Sir, your name is Mark Ellis, is  
18 that correct?

19 A. Yes.

20 Q. How old are you?

21 A. 29.

22 Q. In the past you have been convicted of grand  
23 theft, is that correct?

24 A. Yes.

25 Q. And have you been convicted of attempted robbery?

26 A. Yes.

27 Q. Have you been arrested in the last two years?

28 A. No.

1 Q. And yourself?

2 A. And myself.

3 Q. Did you go into the apartments?

4 A. No, I waited outside.

5 Q. You said Popeye. Who is Popeye?

6 A. Well, so far as I know--I don't know but the name  
7 is supposed to be Clarence Stephenson.

8 Q. I am going to show you a photograph which is  
9 People's 1 for--in evidence.

10 Do you recognize that man?

11 A. Yes, that is Popeye.

12 Q. When you went to the--you went to the Piedmont  
13 Apartments of the Piedmont Hotel, is that correct?

14 A. Yes.

15 Q. All right, who went inside?

16 A. Johnny Reed.

17 Q. Who was outside then?

18 A. Me and Popeye and about six other people.

19 Q. Where are the six other people?

20 A. They was all standing in front of the Piedmont.

21 Q. Had you had anything to drink that night?

22 A. No.

23 Q. Had you injected anything, smoked anything?

24 A. No.

25 Q. Did you have any weapons on you?

26 A. No.

27 Q. Had you ever seen--let me back up.

28 Do you see anyone in the courtroom today that you

13

1 recognize?

2 A. Yes.

3 Q. And where is that person seated?

4 A. To the right.

5 Q. And you pointed a certain direction. Would you  
6 please indicate what that person is wearing in court today?

7 A. White shirt, tan slacks, brown tie, glasses.

8 MR. CUMMINS: May the record reflect that the witness  
9 has pointed to and identified the defendant, Your Honor?

10 THE COURT: Yes, the record will so reflect.

11 MR. CUMMINS: Q. Did you have any grudge against the  
12 defendant on this night or before this night of September 27,  
13 1987?

14 A. No, I never had a grudge against him, never knew  
15 him, never said nothing, never ever had a beef against him at  
16 all.

17 Q. You never had a beef against him at all.

18 How many times had you seen him, the defendant, before  
19 this occasion?

20 A. About three times because, you know, I was  
21 walking around the Tenderloin.

22 Q. Had you ever spoken to him before?

23 A. No.

24 Q. Did you speak to him on this evening before the  
25 actual incident took place?

26 A. No.

27 Q. Did he speak to you?

28 A. No.

1 Q. What were you doing and why were you outside of  
2 the Piedmont Apartments at that time?

3 A. Well, John went to get some outfits.

4 Q. And what do you mean by outfits?

5 A. Syringe.

6 Q. Hypodermic needles, is that the idea?

7 A. Yes.

8 Q. Were any of those to be for you?

9 A. No, I don't use.

10 Q. Where were you going to go after that?

11 A. To the apartment.

12 Q. Where were you personally going to go?

13 A. Personally I was going to go back to the  
14 apartment.

15 Q. Why?

16 A. Because I went to get the drink. We were going  
17 to party. John couldn't get in the apartment because the  
18 doorbell don't work, that is why I was waiting for him in  
19 front of the Piedmont.

20 Q. Where were you waiting in front of the Piedmont  
21 Apartments? Were you directly in front? To the side?

22 A. Directly in front of the Piedmont.

23 Q. How was your body in connection with like the  
24 front door? Were you looking away from it? Looking towards  
25 it?

26 A. Well, I was looking in front of it and I glanced  
27 to my left and that is when Jesse was standing a building  
28 over but I didn't really have nothing on my mind because I

1 didn't--I ain't had no beefs against him so I don't--

2 Q. Where were you on the sidewalk, if you were on  
3 the sidewalk in connection with the front of the hotel?

4 Were you up against anything or where were you?

5 A. I was sitting on the car.

6 Q. What part of a car?

7 A. The front of it.

8 Q. And were you looking towards the hotel or away  
9 from the hotel just before you saw Jesse?

10 A. Just before I saw him I was looking in front of  
11 the hotel.

12 Q. And where the car was parked were you--and you  
13 were sitting on it, was your body faced toward the hotel?

14 A. Faced toward the hotel.

15 Q. At some time then after you were on the car, you  
16 saw the defendant, is that correct?

17 A. Yes.

18 Q. And in what direction was the defendant from you?

19 A. Toward the left.

20 Q. And would that be toward what street?

21 A. Toward Leavenworth.

22 Q. When you first saw the defendant how far away was  
23 the defendant from you, approximately?

24 A. About thirteen feet--twelve, thirteen feet.

25 Q. And what did you see the defendant doing when you  
26 first saw him? If anything?

27 A. Nothing at the time, just looking.

28 Q. What happened next?



1 A. Well, next time I was standing I started seeing  
2 walking toward--

3 Q. You started seeing what?

4 A. The time I was standing in front of the Piedmont  
5 he was just looking but as time passed by I started seeing  
6 him walk toward me or Popeye, I don't know which one, but he  
7 was walking toward where I was sitting.

8 Q. Was anyone else moving towards where you were  
9 sitting at that time?

10 Was anyone else moving at that time when you saw the  
11 defendant moving towards your direction?

12 A. No, just at that time.

13 Q. What happened next?

14 A. Next I looked to my right down the street and the  
15 next thing noise, I was hit, but I seen somebody coming past  
16 me after I got hit.

17 Q. Who was that?

18 A. Jesse.

19 Q. The defendant?

20 A. Yes.

21 Q. You are sure about that?

22 A. I am sure.

23 Q. What happened after he was coming past you?

24 A. I thought it was a firecracker or something, it  
25 was like a shock. I was in shock for a minute.

26 Q. What happened then?

27 A. Then I realized I was hit but I didn't fall right  
28 then and there.

1 Q. How long had you been waiting in front of the  
2 Piedmont before you got shot?

3 A. I was sitting in front of the Piedmont about five  
4 minutes.

5 Q. Were you with Johnny Reed when Popeye approached  
6 him for syringes?

7 A. Yes, I was with him.

8 Q. Was Johnny Reed to get anything for these  
9 syringes?

10 A. I can't answer that, I don't even know. I was  
11 just waiting for him but, you know, I heard him saying  
12 "Outfit". I don't know what he is getting for it or nothing  
13 like that.

14 Q. Don't--for example if he was to get money or  
15 narcotics for those syringes?

16 A. I can't say. I was just waiting for him. He has  
17 told me to wait outside.

18 Q. Are you talking about before you were waiting  
19 outside? I am talking about when you were with Johnny Reed  
20 getting that liquor and Popeye approached you, right?

21 A. He approached John.

22 Q. And you were with Johnny?

23 A. I was with him.

24 Q. And you heard Popeye ask?

25 A. I heard him ask.

26 Q. And what did Johnny answer?

27 A. He say wait, let me go in the building. Let me  
28 go to my room. I got a few upstairs.

1 Q. Where did that happen, the conversation where  
2 Popeye asked?

3 A. Well, I came out the store and I was on my  
4 direction to go back toward Hyde, but he say Johnny come out  
5 with me. He stopped and there is a bus stop sits right there  
6 on Leavenworth and Turk stopping there so I walking  
7 with--walking with him toward the Piedmont.

8 Q. So Popeye wanted some syringes for--from Johnny  
9 Reed?

10 A. Yes.

11 Q. And you decided just to tag along?

12 A. No, I didn't decide--he could get back in the  
13 building, the doorbell didn't work and wasn't no way we was  
14 going to know if he was standing out there or not so I told  
15 him Well, I will wait, you know. I said I hope it don't take  
16 long but I will wait for him.

17 Q. You said you don't know Mr. Burleson?

18 A. No, I don't know him personally.

19 Q. You don't know any reason why he would want to  
20 shoot you?

21 A. For mistaken, mistaken me for somebody else.

22 Q. Are you familiar with the neighborhood at Turk  
23 and Leavenworth?

24 A. I be hanging there since 1976 so I am familiar  
25 with it.

26 Q. That is twelve years you have been hanging in  
27 that neighborhood?

28 A. Yes.

1 end of the cross section and stand between a  
2 pickup -- blue pickup truck and another vehicle, a  
3 car in front.

4 Q. And what did he do?

5 A. He raised and extended his arm and  
6 fired a shot in the direction of the man that had  
7 ran away -- across in front of me.

8 Q. What happened next?

9 A. Mr. Hartman and myself immediately went  
10 inside my building out of fear.

11 Q. This man who raised and extended his  
12 arm, did he do anything before you went into the  
13 building? Did you hear anything?

14 A. He fired a shot in the direction of the  
15 person who had crossed in front of me and ran  
16 diagonally across Leavenworth Street toward Market.  
17 He was going up in that direction toward Market  
18 Street.

19 Q. Did you see --

20 MR. QUIGLEY: I'm sorry, Mr. Cummins.

21 Excuse me, Mr. Riggs. I just didn't  
22 hear that last answer. You were saying that the  
23 person who did the shooting went up Leavenworth  
24 Street?

25 THE WITNESS: No. The person who was  
26 running.

27 MR. QUIGLEY: All right. Sorry.

28 MR. CUMMINS: Q. Did you see what

1 A. Yes, it is.

2 Q. And what can you say about the person  
3 that's shown in that photograph in reference to  
4 that person being the shooter?

5 A. As I said in my statement to Inspector  
6 Erdelatz, he out of all the others was the one that  
7 most resembled that person that fired the shot in  
8 the direction of the person running across in front  
9 of me.

10 Q. Do you see the person in court today  
11 whom that is a picture of?

12 A. I believe that is the gentleman sitting  
13 over here on the right (indicating).

14 Q. And what is he wearing today in court?

15 A. White shirt, tie and glasses.

16 Q. Now, what can you under oath tell the  
17 ladies and gentlemen of the jury about whether or  
18 not he is the person who was firing that gun in  
19 reference to the questions I've been asking you?

20 A. He best resembles the person that fired  
21 the shot that night. That's all I can say.

22 Q. He best resembles of the six, do you  
23 mean?

24 A. Of the six -- Of this person's  
25 photograph in front of me is the same person.

26 MR. CUMMINS: May I ask the defendant  
27 to stand, Your Honor?

28 THE COURT: All right.

1 Q. So today in court after Mr. Quigley  
2 showed you two other photographs and then showed  
3 you the photograph which is People's 1 for purposes  
4 of identification, are you able to say positively  
5 that this person who is the deceased in this  
6 case -- is that correct?

7 A. Absolutely.

8 Q. -- is the man who ran across the  
9 street in front of you?

10 A. Yes.

11 MR. CUMMINS: Nothing further.

12 THE COURT: Thank you. Next witness.

13 MR. CUMMINS: Yes, Your Honor. The  
14 People would call Bencel Bautista.

15  
16 BENCEL BAUTISTA,  
17 called as a witness on behalf of the People, having  
18 been first duly sworn, testified as follows:

19  
20 THE WITNESS: Bencel Bautista,  
21 B-e-n-c-e-l, last name B-a-u-t-i-s-t-a.

22 THE COURT: You may proceed.

23  
24 DIRECT EXAMINATION

25  
26 BY MR. CUMMINS:

27 Q. Do you see Jesse Burleson sitting in  
28 the courtroom?

1 Q. Where did you see the defendant?

2 A. In the Ternderloin.

3 Q. And where in the Tenderloin did you see  
4 him, if you recall.

5 A. Turk and Leavenworth.

6 Q. Who were you with, if anyone, when you  
7 saw the defendant?

8 A. I was with my girlfriend, Antonique  
9 Shelton.

10 Q. Were you on foot or in a car?

11 A. We was in my car.

12 Q. And how did you happen to come in  
13 contact with the defendant? Was it just by chance  
14 or was it prearranged that you'd see each other?

15 A. It just happened. We just happened to  
16 go through.

17 Q. So what happened when you saw the  
18 defendant?

19 A. We just chatted.

20 Q. And what did you talk about?

21 A. Oh, we just said, "What's up," and he  
22 said that some St. Louis guys was after him and  
23 they had a contract.

24 Q. What does that mean, "they had a  
25 contract"?

26 A. I don't know. I wasn't quite sure at  
27 the time.

28 Q. How did the defendant appear when he



1 said that?

2 MR. QUIGLEY: Objection. Vague.

3 MR. CUMMINS: All right.

4 Q. Would you characterize -- Was he happy,  
5 sad, tearful, frightened?

6 A. He -- like worried.

7 Q. He said some guys from St. Louis were  
8 looking for him?

9 A. Yes.

10 Q. Did he say what the guys from St. Louis  
11 were going to do to him, if anything?

12 A. No.

13 Q. But he did say that the guys from  
14 St. Louis had a contract on him?

15 A. Yes.

16 Q. Did he say what that was in reference  
17 to, why some people from St. Louis would have a  
18 contract on him?

19 A. No.

20 Q. Do you know, sir, what that phrase  
21 means, "having a contract"? Do you have any idea  
22 what that means?

23 A. I wasn't quite sure at the time.

24 Q. Do you have an idea of what it means  
25 now?

26 A. Yes.

27 Q. And what does it mean --

28 A. It means --

1

Q. -- as you understand it?

2

A. What do it mean? It means kill a person.

3

4

Q. Did you ask the defendant why anyone was out to kill him?

5

6

A. No.

7

Q. Did the defendant say anything else?

8

A. No.

9

Q. Did the defendant -- Well, what else did the defendant say?

10

11

A. That was about it.

12

Q. Do you recall anything else he said to you at that time?

13

14

A. No.

15

Q. Do you recall if he said to you that he wanted you to join him?

16

17

A. No.

18

Q. Was it your girlfriend's sister's birthday that night?

19

20

A. Yes.

21

Q. And after you talked to the defendant, did you go somewhere for your girlfriend's sister's birthday?

22

23

24

A. Yes.

25

Q. Do you remember talking to San Francisco Police Department inspectors, either Inspector Kenney or Inspector Erdelatz, on October 5th, 1987?

26

27

28

1

A. Yes.

2

Q. And did you give them a statement at that time?

3

4

A. Yes.

5

6

7

8

Q. Did you tell either Inspector Ed Kenney or Inspector Ed Erdelatz that the defendant told you that he wanted you to join him but you couldn't because it was your girlfriend's sister's birthday?

9

A. (No response)

10

11

Q. Do you remember saying that to the Inspector?

12

13

A. I told him I was going out to my sister-in-law's birthday.

14

Q. I understand that.

15

16

17

Your Honor, I have a one-page document that's been marked as People's 9 for purposes of identification.

18

THE COURT: All right.

19

20

21

22

MR. CUMMINS: Q. I'm just going to show you this, Mr. Bautista, and could you please take a look at it and see if you recognize it. Just let me know when you've finished reading that.

23

You've read that, sir?

24

A. Yes.

25

26

27

28

Q. All right. Do you see the part in there where the sentence begins, "He asked me to join him, but it was my girlfriend's sister's birthday"?

1           that point Johnnie Reed identified Mr. Burleson.

2                   THE COURT:   Mr. Cummins, do you accept  
3           that stipulation?

4                   MR. CUMMINS:   Yes, Your Honor.

5                   THE COURT:   All right.   Ladies and  
6           Gentlemen, at that point of the questioning process  
7           in Municipal Court, then Johnnie Reed on that date  
8           before the judge while under oath on the stand,  
9           pointed and identified the defendant, Mr. Burleson,  
10          in the Municipal Court.

11                  All right.   Go on.

12                  MR. CUMMINS:   Going to line 13, Your  
13          Honor, on the next page.

14                  MR. CUMMINS:   "QUESTION:

15                  How close was the  
16                  defendant, Mr. Burleson,  
17                  Jesse, as you referred to  
18                  him, to Mark when you first  
19                  saw him?"

20                  THE WITNESS:   "ANSWER:

21                  About like that, I guess.

22                  MR. CUMMINS:   "Indicating  
23                  with his hands approxi-  
24                  ately two, two-and-a-half,  
25                  three feet."

26                  MR. CUMMINS:   "QUESTION:

27                  Could you do that again for  
28                  His Honor to see?"

1  
2  
3  
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28

THE WITNESS: "ANSWER:

(Witness complies)"

MR. QUIGLEY: My response was, "I  
would say a foot-and-a-half."

THE COURT: And the Court said, "Okay."  
Go on.

MR. CUMMINS: "QUESTION:

What did you first see  
between the two? Did you  
understand the question?  
Did you see anything  
happening between the two  
of them when you first saw  
them, that is Mark and the  
defendant?"

THE WITNESS: "ANSWER: Not  
at first."

MR. CUMMINS: "QUESTION:

Did you eventually see  
something about the  
defendant that attracted  
your attention?"

THE WITNESS: "ANSWER: He  
had a gun in his hand."

MR. CUMMINS: "QUESTION:

What kind of gun was it?"

THE WITNESS: "ANSWER: I  
don't know what kind of

1 weren't more than three feet on the other side of  
2 the window.

3 Q. Did you see anything happen amongst  
4 these two men and the woman?

5 A. The man and the woman came off of Turk  
6 around the corner onto Leavenworth. They were on  
7 the sidewalk at that point. There were cars parked  
8 on the corner. They came in front of the first car  
9 between two cars and the gentleman came -- the  
10 other gentleman came not on the sidewalk but from  
11 the street crossing Turk and joined them.

12 They passed a gun -- The gentleman that  
13 joined them passed a gun to the girl and she placed  
14 it in a bag that she was carrying at the point  
15 where they joined together and then they came  
16 across the street right in front of the hotel and  
17 continued up the street.

18 Q. Do you know much about guns, the  
19 difference between, for instance, a revolver and an  
20 automatic?

21 A. I don't know a whole lot about guns. I  
22 know that a revolver is a little bit bigger, but I  
23 don't know a whole lot about them, no.

24 Q. What happened to the gun when it was  
25 being passed? You said it went from one male to  
26 the female; is that correct?

27 A. Yes.

28 Q. Was anything done with the gun?

1 THE WITNESS: Thank you.

2 THE COURT: Next witness.

3 MR. CUMMINS: Yes. Your Honor, we have  
4 two witnesses up in the Homicide Detail right now.  
5 I was wondering if you wanted to take your morning  
6 break. Otherwise, we can make a quick phone call.

7 THE COURT: All right. We're going to  
8 take a ten-minute recess. Don't discuss the case  
9 or form any opinions.

10 You'll have the witnesses here in ten  
11 minutes, one after another; right?

12 MR. CUMMINS: Oh, yes, Your Honor.

13 (Recess taken)

14 THE COURT: All right. Let the record  
15 reflect the defendant is present. So are the  
16 attorneys. So is the jury. Next witness.

17 MR. CUMMINS: Yes, Your Honor. The  
18 people would call Jessie James Jackson. We'd ask  
19 that he step forward and be sworn.

20  
21 JESSIE JAMES JACKSON,  
22 called as a witness on behalf of the People, having  
23 been first duly sworn, testified as follows:

24  
25 THE WITNESS: Jessie James Jackson.

26 ///

27 ///

28 ///



DIRECT EXAMINATION

BY MR. CUMMINS:

Q. Directing your attention to September 27, 1987, was that the night that your godfather was killed?

A. Yes, it was.

Q. And what is his name?

A. Clarence Stevenson.

Q. I'm going to show you People's Exhibit 1 in evidence, I believe, briefly.

Is that a picture of your uncle --

A. Yes, it is.

Q. -- or your godfather?

Were you on Turk Street near to or in front of the Hurley Apartments -- excuse me -- near to the place of the scene of the shooting, the Piedmont Apartments?

A. Yes.

Q. And at around 11 o'clock, can you tell us approximately where you were standing in relation to the Piedmont Apartments on Turk Street?

A. I was standing about 15 feet away from the front door of the Piedmont.

Q. Were you standing with anyone else? Was anyone right next to you or close nearby?

A. Yeah. I was standing in a crowd of four people: Clarence Stevenson and Mark and Gary.

1 I moved --

2 Q. Do you know Mark's last name?

3 A. No, I don't.

4 Q. Do you know Gary's last name?

5 A. No.

6 Q. Is he dead now?

7 A. Yes, he is.

8 Q. And at approximately 11 o'clock on that  
9 night, what occurred?

10 A. Well, I stepped away from the crowd  
11 because there was a crowd of people standing there  
12 and I stepped away from the crowd. I seen Jesse  
13 come out the door (indicating).

14 Q. When you say, "Jesse," you pointed in a  
15 certain direction. Would you tell us what Jesse is  
16 wearing today, please?

17 A. He's wearing a white shirt and a green  
18 tie.

19 MR. CUMMINS: And may the record  
20 reflect that the witness has referred to and  
21 identified the defendant, Your Honor?

22 THE COURT: Yes.

23 MR. QUIGLEY: May the record reflect  
24 the defendant is wearing a brown tie as identified  
25 by Ms. Nicholson?

26 THE COURT: All right. He's wearing a  
27 white shirt and a tie.

28 MR. CUMMINS: Q. Did you know the

1 defendant before September 27, 1987?

2 A. Yes.

3 Q. How long had you known him before that  
4 time? Like months, days, years?

5 A. Oh, off and on, I've been seeing him  
6 around the Tenderloin about a year.

7 Q. Up until that time at 11 o'clock, did  
8 you have anything against the defendant?

9 A. No, I didn't.

10 Q. And after you first saw the defendant,  
11 what happened?

12 A. (No response)

13 Q. Let me rephrase that.

14 You say you saw him coming out of the  
15 hotel or from the entrance way of the hotel?

16 A. I seen him come out of the Piedmont  
17 Apartments. When he came out of the Piedmont  
18 Apartments, he had a gun and he said, "You mother-  
19 fucker," bam! and shot Mark. After the bullets  
20 went off, I ran towards -- down Turk Street towards  
21 Jones. I heard some more shots. I come back up  
22 the street and Gary told me that Clarence --

23 Q. Don't tell me what Gary told you.

24 Did you see Popeye -- Did you see  
25 Clarence Stevenson being shot?

26 A. No, I didn't.

27 Q. You just heard something to that  
28 effect?

1 A. Yes, it is.

2 Q. And during that time that I spoke to  
3 you, Inspector Kenney was with me; is that correct?

4 A. Yes.

5 Q. You indicated that to us this morning  
6 at about -- somewhere before court started, before  
7 9:30 or something; is that correct?

8 A. Yes.

9 Q. You're in custody now; is that right?

10 A. Yes, I am.

11 Q. Now, have you been promised anything by  
12 the inspectors in this particular case in terms of  
13 a reduced sentence or anything in order to testify  
14 in this matter?

15 A. No, I haven't. I've already been  
16 sentenced.

17 Q. Pardon?

18 A. I have already been sentenced.

19 Q. Have you been promised anything by  
20 myself or any member of the District Attorney's  
21 office in terms of if you testify and how you  
22 testify in this particular matter?

23 A. No.

24 Q. Has anyone from the defense -- that  
25 is, Mr. Quigley, the defense attorney who is to  
26 my -- the second gentleman to my left, or any of  
27 his investigators, been up to talk to you or speak  
28 to you regarding your testimony in this particular

1 case?

2 A. No.

3 Q. Are you sure it was the defendant who  
4 had the gun and it was the defendant who shot Mark?

5 A. Yes, I am.

6 MR. CUMMINS: No further questions.

7

8 CROSS-EXAMINATION

9

10 BY MR. QUIGLEY:

11 Q. You gave the police a false address  
12 that night, the night you gave the statement?

13 A. No, I didn't.

14 Q. Your home is 342 Haight Street?

15 A. I was staying with Clarence Stevenson  
16 and his wife and his son.

17 Q. So you weren't registered there at  
18 324 Haight Street?

19 A. Pardon me?

20 Q. You weren't registered there at  
21 324 Haight Street?

22 MR. CUMMINS: Registered as --

23 MR. QUIGLEY: Q. I mean that wasn't  
24 your apartment, was it?

25 A. No, it wasn't. It was his apartment.

26 Q. But the people who stayed there, they  
27 knew you --

28 A. Of course.

1 and this morning did you ever come forward and tell  
2 anybody about the shooting?

3 A. I believe I was incarcerated, sir.

4 Q. You're incarcerated. Where have you  
5 been incarcerated?

6 A. Here, CDC.

7 Q. The Department of Corrections?

8 A. Yes.

9 Q. State Prison?

10 A. Yes.

11 Q. You've been convicted of how many  
12 felonies?

13 MR. CUMMINS: Whoops. Objection.

14 MR. QUIGLEY: Q. How many felonies --

15 MR. CUMMINS: Excuse me. Objection.

16 THE COURT: Do you want to approach the  
17 bench?

18 (Bench conference)

19 MR. QUIGLEY: Q. While you were  
20 incarcerated, sir, you're in the constant company  
21 of sheriffs while you're in this building?

22 A. Yeah, when I'm here.

23 Q. Pardon me?

24 A. When I'm here.

25 Q. How long were you here?

26 A. When? What specific time are you  
27 talking about?

28 Q. How many days, weeks or months have you

1        been imprisoned here in this building since the  
2        date of the shooting between then and now?

3            A.        I guess about -- almost a year.

4            Q.        And in all that time, you're never  
5        really out of the earshot of a deputy sheriff, are  
6        you?

7            A.        Pardon me?

8            Q.        If you ever called out, a deputy would  
9        hear?

10          A.        Called out?

11          Q.        Yes.

12          A.        Sure.

13          Q.        Pardon me?

14          A.        Sure.

15          Q.        So any time you wanted, you could have  
16        informed a sworn deputy sheriff about this  
17        shooting, correct?

18          A.        No.

19          Q.        You couldn't? There was something that  
20        refrained you -- something that stopped you from  
21        telling a sheriff or a policeman about this  
22        shooting?

23          A.        Yes.

24          Q.        What was that?

25          A.        I don't -- You know, I don't talk to  
26        the sheriffs.

27          Q.        But you talked to police inspectors  
28        this morning; right?



1 A. Briefly.

2 Q. And you talked to them briefly on  
3 September 28th, 1987 a couple of hours after the  
4 shooting happened?

5 A. Yes, I did.

6 Q. And did you tell them at that point who  
7 had done the shooting?

8 A. Yes, I did.

9 Q. And you told them it was Mr. Burleson?

10 A. I believe I did.

11 Q. Where did Mr. Burleson come from just  
12 before the shooting?

13 A. Out of the front door of the Piedmont.

14 Q. Do you know where he went after the  
15 shooting?

16 A. No, I don't.

17 Q. Where did you go?

18 A. I went to Turk and Jones.

19 Q. All right. Showing you what's been  
20 marked as Exhibit 5, would it be accurate to say  
21 you ran down the sidewalk on the north side of Turk  
22 Street in an easterly direction towards Jones  
23 Street?

24 A. What side is the Piedmont on?

25 Q. This is the Piedmont Apartments right  
26 here (indicating).

27 A. That's the side I ran down.

28 Q. Where did you go when you got to Jones

1 TUESDAY, MAY 31, 1988

AFTERNOON SESSION

2  
3 P R O C E E D I N G S

4  
5 THE COURT: All right. Let the record  
6 reflect the defendant is present. So are the  
7 attorneys. So is the jury. Next witness.

8 MR. CUMMINS: Yes, Your Honor. He's  
9 just outside the courtroom.

10  
11 DON CARLOS RHODES,  
12 called as a witness on behalf of the People, having  
13 been first duly sworn, testified as follows:

14  
15 THE WITNESS: Don Rhodes, R-h-o-d-e-s.

16  
17 DIRECT EXAMINATION

18  
19 BY MR. CUMMINS:

20 Q. Sir, will you tell us your name again,  
21 please?

22 A. It's Don Rhodes, R-h-o-d-e-s.

23 Q. And presently you're in jail somewhere;  
24 is that correct?

25 A. Yes, I am.

26 Q. Where is that?

27 A. Santa Clara County.

28 Q. And what are you doing time on?

1 say?

2 A. Yes.

3 Q. Would it change your opinion at all if  
4 I told you Mr. Burleson has never had a step-  
5 father?

6 A. No, sir.

7 Q. Are you sure he said that?

8 A. Yes, sir.

9 Q. Did Mr. Burleson admit any other crimes  
10 besides this shooting?

11 A. No, sir.

12 Q. What was Raymond in there for?

13 A. I believe it was tickets. I'm not  
14 sure. I wasn't too -- familiar with too many  
15 people in that jail.

16 Q. But you heard the conversation  
17 between --

18 A. Yes.

19 Q. -- Raymond and Mr. Burleson?

20 A. Yes.

21 Q. You heard the whole conversation?

22 A. Yes, sir.

23 Q. And they were asking each other what  
24 they were in for?

25 A. Yes, sir.

26 Q. And what was Raymond in for?

27 A. I don't recollect, I don't remember.

28 Q. So you just remember one side of the

1 conversation?

2 A. Yes.

3 Q. The one you told the police about?

4 A. Yes, sir.

5 Q. You just can't remember the other side?

6 A. No, sir.

7 Q. And you said -- and I'm going to quote  
8 again -- "He said because they was supposed to have  
9 been out to try -- you know, to try to off him  
10 because they were jealous of him and all this other  
11 stuff." Is that what you said?

12 A. Yes.

13 Q. "They were supposed to have been out to  
14 try to off him," that means that that's what  
15 somebody else is saying about him; right?

16 A. That means like when somebody is trying  
17 to put a hit on somebody, like when somebody is  
18 trying to kill somebody.

19 Q. That's a contract you're talking about;  
20 right?

21 A. Yes, sir.

22 Q. Now, when you say, "They were supposed  
23 to have been," that indicates that someone else is  
24 saying this? If I were to say, "That man was  
25 supposed to have said this about me," I'm not  
26 saying he did say that. It was something he was  
27 supposed to have said; right?

28 A. No. Like -- For instance, like if I'm

1 talking to somebody and I say, "Yeah, they had a  
2 contract on me," they was going to try to kill me,  
3 but it's a country way of speaking, you know,  
4 because of my slang, the way I talk.

5 Q. I'm sorry. What's a country way of  
6 speaking?

7 A. You know, I say, "supposed."

8 Q. Where are you from, sir?

9 A. Well, I'm originally -- I was born in  
10 'Frisco and raised in Richmond, Virginia, and Palo  
11 Alto.

12 Q. Didn't you tell the police you were  
13 from South Lake Tahoe?

14 A. Yeah. That's where I'm on parole from.

15 Q. Have you ever been convicted of a  
16 felony?

17 A. Yes.

18 Q. Besides the felony battery you're in  
19 Santa Clara for?

20 A. Yes.

21 Q. What's that?

22 A. It was a felony. I'm not forced to  
23 answer it. Is it important?

24 MR. QUIGLEY: Your Honor, may the  
25 witness be instructed to answer my question?

26 MR. CUMMINS: Well, I'd ask for a quick  
27 Castro hearing, Your Honor.

28 THE COURT: All right. Sidebar or in

1                    MAGGIE RICHARDS,

2                    called as a witness on behalf of the defense, having  
3                    been first duly sworn, testified as follows:

4  
5                    THE WITNESS:        My name is Maggie  
6                    Richards, M-a-g-g-i-e.   R-i-c-h-a-r-d-s.

7  
8                    DIRECT EXAMINATION

9  
10                  BY MR. QUIGLEY:

11                  Q.        Ms. Richards, what is your occupation?

12                  A.        I'm a private investigator.

13                  Q.        Did you work on this case for me?

14                  A.        I did.

15                  Q.        In the course of working on this case,  
16                  did you have occasion to speak with Eileen  
17                  Nicholson?

18                  A.        I did.

19                  Q.        And did Ms. Nicholson describe the  
20                  transfer of a gun from one person to another on  
21                  Leavenworth Street that occurred on September 27,  
22                  1987?

23                  A.        Yes.

24                  Q.        Did she give you a physical description  
25                  of the man who gave the gun to the other person?

26                  A.        Yes.    She described that individual as  
27                  being about 5'9", wearing dark clothes, with a dark  
28                  jacket with denims -- blue denims and with a black

1 MR. CUMMINS: No questions.

2 MR. QUIGLEY: Excuse me. I do have.

3 Q. Did you attempt to locate a Jessie  
4 James Jackson?

5 A. Yes, I did.

6 Q. Using information provided you through  
7 discovery of police reports in this case?

8 A. Yes.

9 Q. Did you go to the address he gave the  
10 police?

11 A. Yes.

12 Q. Were you able to locate him there?

13 A. No.

14 Q. Did you call the telephone number he  
15 gave to the police?

16 A. Yes, the telephone number associated  
17 with the address.

18 Q. Did someone answer?

19 A. Yes. A woman answered.

20 Q. Had they ever heard of Jessie Jackson?

21 A. No. Denied knowing him.

22 MR. QUIGLEY: Thank you. No further  
23 questions.

24

25 CROSS-EXAMINATION

26

27 BY MR. CUMMINS:

28 Q. Were you with the Sheriff's Department



1 for eight years?

2 A. Yes.

3 Q. Did you ever think as a former  
4 Sheriff's Department investigator, someone who is  
5 now a private investigator -- did you ever think of  
6 calling the California Department of Corrections to  
7 locate Mr. Jackson?

8 A. Not at that time.

9 Q. Doesn't the Sheriff's Department --  
10 Isn't it responsible for bringing prisoners from  
11 State Prison to the City and County of San  
12 Francisco if they're going to testify in certain  
13 cases?

14 A. Actually, my function as a private  
15 investigator is to do what I'm asked to do by the  
16 attorney for whom I'm working.

17 Q. Did you hear my question?

18 A. I did.

19 Q. Isn't the San Francisco Sheriff's  
20 Department responsible for bringing prisoners who  
21 are witnesses from State Prison to San Francisco to  
22 court to testify?

23 A. Yes.

24 Q. And did you yourself ever ask the  
25 homicide inspectors where Jessie James Jackson was?

26 A. No, I did not.

27 Q. And you've been to the homicide detail,  
28 haven't you, to pick up photographs that were

1 Q. Can you buy anywhere .25 caliber ammunition that  
2 could be fired out of any revolver?

3 A. No.

4 MR. QUIGLEY: No further questions.

5 MR. CUMMINS: No questions.

6 THE COURT: Thank you.

7 MR. QUIGLEY: Call Inspector Kenney.

8 (WHEREUPON \*EDWIN KENNEY, having been previously  
9 sworn, resumed the stand and testified as follows:)

10 THE CLERK: Mr. Kenney, you have been previously  
11 sworn and you are still under oath.

12 Please restate your name for the record.

13 THE WITNESS: Edwin Kenney, K-E-N-N-E-Y.

14 MR. QUIGLEY: Thank you.

15 \*Direct-Examination

16 MR. QUIGLEY: Q. Inspector Kenney, you and your  
17 partner Inspector Erdelatz are the homicide officers on this  
18 case?

19 A. Yes, sir.

20 Q. And you have been since the beginning?

21 A. Yes.

22 Q. Any other members of the homicide detail who are  
23 responsible for this case?

24 A. No.

25 Q. At some point, Inspector, did you order a tape  
26 recording from the Police Communications Department relative  
27 to this case?

28 A. I did on two occasions.

1 A. Well, the primary reason is this occurred  
2 approximately a week later and also people had moved from one  
3 place to another in jail or out of jail and also it has been  
4 my experience that upon attempting to interview people in  
5 custody, especially in relation to asking them questions as  
6 to the activities of another inmate that they are reluctant  
7 to give forth any information. Nobody wants what they call a  
8 snitch jacket.

9 Q. Inspector, did you speak to the two young people  
10 who testified in this case, one was Antonique Shelton. Did  
11 you interview her?

12 A. Yes, I did.

13 Q. Were you also present at the time that Bancel  
14 Bautista was interviewed?

15 A. Yes, I was.

16 Q. Where were they interviewed, Inspector?

17 A. In front of Bancel's house in a plain clothes  
18 police vehicle.

19 Q. And I am going to show you what has been marked  
20 as People's 11 for purposes of identification.-

21 Would you take a look at that, please?

22 Do you recognize what that is, Inspector?

23 A. Yes, I do.

24 Q. When was this statement taken from Antonique  
25 Shelton?

26 A. On the 5th of October at about 7:00 o'clock in  
27 the evening.

28 Q. Okay, did you speak to Bancel or Antonique first?

1 A. We spoke to Antonique first and took a statement  
2 from her and then we spoke to Bencel.

3 Q. All right.

4 Did you ask Antonique at that time when you were  
5 interviewing her what, if anything, the defendant said. What  
6 the defendant said to her and Bencel earlier in the evening  
7 on the night of the shooting?

8 A. Yes, I did.

9 Q. What was her response?

10 A. She told me that the defendant got into their car  
11 and said that there were some niggers from St. Louis trying  
12 to kill him.

13 Q. Anything else?

14 A. She also told me that she didn't know who they  
15 were but one of them just had gotten out of the pen and that  
16 the defendant, Jesse, was looking for some help and wanted  
17 Ben to go with him.

18 Q. And is this your typewriting or is this the  
19 typewriting of Inspector Erdelatz?

20 A. That is mine.

21 Q. And did she, that is referring to Antonique, say  
22 that the defendant had said anything about leaving town and  
23 living with his father?

24 A. Yes, he did.

25 Q. All right.

26 I am sorry, did she say that to you that the defendant  
27 had said that?

28 A. Yes, she said that he told him he might go to

1 Texas to get out from under these guys.

2 MR. CUMMINS: May I have one more moment, Your Honor?  
3 I want to find something.

4 Q. You spoke to Bencel Bautista just after you spoke  
5 to Antonique, is that correct?

6 A. That is correct.

7 Q. Did Bencel tell you that earlier on the night of  
8 the shooting between 6:00 PM and 7:00 PM that he was with his  
9 girlfriend, Antonique Shelton?

10 A. Yes, he did.

11 Q. Did Bencel tell you "I spoke with Jesse"--excuse  
12 me, strike that.

13 Did Bencel Bautista tell you "After I left Jesse at  
14 6:00 PM to 7:00 PM he phoned me about three hours before the  
15 shooting."

16 Did Bencel Bautista tell you that?

17 A. Yes, he did.

18 Q. Did Bencel Bautista tell you--and this is again  
19 on October 5th, of 1987, that the defendant had told him on  
20 the night of the shooting that "Some guys from St. Louis were  
21 looking for him to kill him, they were jealous of him."

22 A. Yes, he did.

23 Q. Did Bencel Bautista tell you that the defendant  
24 had said on September 27, 1987, that he, the defendant,  
25 wanted Bencel to join him?

26 A. Yes, he did.

27 Q. And further that Bencel indicated to you at that  
28 time that he had said he couldn't leave then because it was

1 his girlfriend's sister's birthday?

2 Did Bencel tell you that?

3 A. Yes, he did.

4 MR. CUMMINS: No further questions, Your Honor.

5 \*Redirect-Examination

6 MR. QUIGLEY: Q. These statements that you are  
7 talking about, these statements we were just talking about  
8 were made by Bencel Bautista, correct?

9 A. One was by Antonique and one was by Bencel.

10 Q. But by the two of them?

11 A. Yes, to Inspector Erdelatz and myself in the car  
12 in front of Bautista's house.

13 Q. And this is what they said the defendant had said  
14 to them?

15 A. Well, some of it and some of it they said  
16 directly to me.

17 My purpose in interviewing him was to determine  
18 whether or not he was at the scene of this incident and what  
19 was his involvement.

20 Q. Whether who was at the scene?

21 A. Whether Ben was at the scene of this incident and  
22 he said I wasn't there, that the defendant had tried to--had  
23 phoned him earlier to try to get him to come but he was tied  
24 up with the--a birthday party and he couldn't make it and he  
25 said you can ask anybody, I was at my girlfriend's sister's  
26 birthday. I wasn't there. He tried to get me to help him  
27 because he was trying to get out from under some people that  
28 he was afraid of from St. Louis that had threatened him.

1 Q. Now, Mr. Bautista, did he say to you where the  
2 defendant wanted him to go?

3 A. No.

4 Q. Did he--

5 A. He said.

6 Q. Did he--I am sorry. I interrupted you. I am  
7 sorry.

8 A. It was my understanding that the defendant wanted  
9 Bautista to go with him to be with him because he was  
10 anticipating a problem with some people from St. Louis.

11 Q. Did you write that down in a statement in the  
12 record you made of your conversation with Ben Bautista?

13 A. Yes, I did.

14 Q. He said he wanted him to go with him?

15 A. Yes, he did.

16 Q. For protection?

17 A. I think so, yes.

18 Q. Did he say where?

19 A. No, he did not.

20 Q. Did he say to do what?

21 A. No, he did not.

22 Q. Now, did you write or did you type up this  
23 statement while you were in the car?

24 A. No, I wrote the information on the top of the  
25 statement form while I listened to Antonique and I wrote it  
26 up immediately upon going back to the office.

27 Q. How much time had passed?

28 A. I don't recall. It was--probably would be within

1 motion 1118.1 and that is it.

2 As far as the instructions, let me run through these  
3 instructions and I will supplement them at 1:00 o'clock.

4 These are the instructions I have gone over, read and  
5 considered; the instructions read and considered, submitted  
6 by both sides.

7 1.00, 1.01, 1.02, 1.03.

8 2.00, 2.01, 2.09, 2.11, 2.12, 2.13, 2.20, 2.21, 2.22,  
9 2.23, 2.27, 2.51, 2.60, 2.61, 2.71, 2.72, 2.80, 2.81, 2.90,  
10 2.91, 2.92.

11 6.00.

12 8.00, 8.10.

13 8.11 will be modified.

14 8.20, 8.30.

15 Counsel both sides I understand informally  
16 off-the-record that you are asking that 8.31 not be given.  
17 The defense for trial tactic purposes and the prosecutor  
18 because he believes that it is inapplicable, second degree  
19 murder killing resulting from unlawful act dangerous to life.

20 MR. QUIGLEY: That is correct, Your Honor.

21 THE COURT: Is that correct?

22 MR. CUMMINS: Yes, sir.

23 THE COURT: And then also no one is asking for 8.55, a  
24 proximate cause.

25 MR. QUIGLEY: That is correct.

26 THE COURT: And no one is asking for voluntary  
27 manslaughter. And you waive my considering that as an  
28 instruction?



1 MR. QUIGLEY: Yes, sir.

2 MR. CUMMINS: Yes.

3 THE COURT: And then we proceed with 8.70, 8.71, 8.73,  
4 8.74.

5 At 1:00 o'clock I will tell you what instructions that  
6 I intend to give and listen to any objections that you might  
7 have regarding 3.31, 3.31.5 and possibly 3.30.

8 And then I will give instructions 2.02, 17.02, 17.19,  
9 17.20, 17.30, 17.31, 17.40, 17.41, 17.42, 17.45, 17.47 and  
10 17.50.

11 All other instructions that have not been mentioned by  
12 this court was either withdrawn by the prosecutor or defense  
13 counsel or that either one of you have no objections that any  
14 other requested instructions that you have asked have not  
15 been given, is that correct?

16 MR. QUIGLEY: Yes.

17 THE COURT: All right.

18 MR. CUMMINS: Your Honor, there are only two other  
19 matters that I can think of besides instructions and before  
20 the argument. One is that a couple of exhibits--I think you  
21 did ask us if we rested. There are the bullets I would like  
22 to move in.

23 THE COURT: We will do it in open court.

24 MR. CUMMINS: Fine, okay.

25 THE COURT: You have no objection to that?

26 MR. QUIGLEY: No.

27 THE COURT: All right.

28 You might have some exhibits too.

1 describe it one through ten backwards and forward, they are  
2 witnesses with varying educational background and not used to  
3 being in a court with direct and cross-examination. They  
4 tell it as best they can.

5 Sure there are inconsistent on little things and I  
6 would submit that if in any case the witnesses weren't  
7 inconstent on little things it might be really suspect as to  
8 how the particular witnesses had been coached or prepared for  
9 their testimony at trial.

10 There are two real keys to this case that I finally  
11 submit to you and then I am going to sit down and those are  
12 Antonique Shelton, number one, and Bencel Bautista.

13 Bencel as predicted did the walk when he came up to  
14 the stand. I can't imitate it. Bencel is quite frightened,  
15 ladies and gentlemen.

16 Why is he frightened? Because he goes out into the  
17 community every day, into that community of the Tenderloin.

18 I don't recall the testimony if he says he lives down  
19 there. His girlfriend who is pregnant by him also is being  
20 called as a witness, he is concerned for her also.

21 And talk about why they might be afraid. It is  
22 perfectly clear, is it not, that when they spoke to Inspector  
23 Kenney and Inspector Erdelatz they said that the defendant  
24 had made statements to them three hours before the shooting  
25 or a couple of hours before the shooting, maybe five hours  
26 before the shooting and the defendant said as he told the--as  
27 was told to the inspectors, the defendant said some guys from  
28 St. Louis are out to get me or out to kill me.

1 Bencel said he didn't know what a contract was but  
2 Bencel said that he said something--the defendant said  
3 something about a contract, all right?

4 This is the good friend of the defendant and he can't  
5 get away, he admitted that on the stand that is what he told  
6 to the inspectors and the inspector testified that that was  
7 what was told to him.

8 Bencel Bautista saying the defendant is aware that  
9 some people from St. Louis were out to kill him or there is a  
10 contract out on him.

11 What is that all about?

12 Why are contracts put out on people? Why are people  
13 out to kill other people, hired killers?

14 You talk about that in determining what the defendant  
15 does or what his case is all about.

16 Antonique Shelton, and I don't condemn her, I am sure  
17 defense counsel won't, is scared to death. She is a very  
18 young lady who is about to have a baby. She lives down in  
19 that particular area.

20 It is clear from the testimony, I mean these are  
21 kernels of truth that you can build from in this case. She  
22 told the police on October 5th, 1987, that she was in the car  
23 and in front of you she got up on the stand, in front of you  
24 and she said no the defendant didn't say anything, I didn't  
25 hear. I was kind of asleep. And she denied making any  
26 previous statements to the police in that regard.

27 However, the last thing that I just read to you and I  
28 am not going to repeat it right now, it would be available if

1       you asked it to be reread, the day before that she  
2       testified--she testified, excuse me, on a Thursday late in  
3       the afternoon, that is what I just read and she indicated  
4       briefly and essentially yes, the defendant did approach and  
5       he said that there are guys from St. Louis out to kill him  
6       and that is what she said in response to my questions.

7               And she said that she indicated some further things in  
8       response to my questions and then quite clearly the next day  
9       she gets on the stand in front of you and says I don't recall  
10      saying that, I didn't say that.

11             It is clear that she had said it. She admitted it  
12      under oath on Thursday.

13             It is clear that she said it because the inspector got  
14      on the stand and said yes, she told us that.

15             These things; the defendant said that there were  
16      people out from St. Louis out to kill her, it is clear that  
17      she didn't quite tell it all right on Friday but I  
18      understand, she is sixteen and a half or seventeen, she has  
19      to go back and live in that community.

20             Figure out what the truth is and then put all of it  
21      together: My initial remarks, the testimony of the witnesses  
22      and put it together with this.

23             What a coincidence it is, ladies and gentlemen, that  
24      two people are shot, one killed, one shot in the neck, within  
25      five hours after the time that the defendant makes these  
26      statements that there are some hitmen out to get him, that  
27      the defendant is out on the street at that particular time,  
28      even though there are hitmen after him, that he approaches

1 too broad a brush. Perhaps we misstate what they actually  
2 testify to. Perhaps either he or I may make comments to you  
3 that you don't particularly like.

4 I do suggest that the way that Mr. Quigley  
5 characterized the People's witnesses was too broad a brush,  
6 talking about felons and drug addicts well kind of goes with  
7 the Tenderloin down in that particular district at 11:00  
8 o'clock on a weekend night.

9 You are not going to have the outstanding members of  
10 your community. There were some good people who came and  
11 testified. There are some people who have been convicted of  
12 felony who came forward and I brought it out in  
13 direct-examination they had prior records but you know this  
14 happened in their community, our community.

15 And don't I believe that based on the totality of  
16 everything that occurred here, they are telling the truth?  
17 Because it is not one or two witnesses or maybe three, but by  
18 my calculation at least six witnesses who say the gunman,  
19 when you take their testimony as a whole, is that gentleman  
20 right there, Mr. Burleson.

21 Again I disagree with defense counsel and I don't  
22 raise my voice, I used to do that in days past when I was a  
23 young prosecutor, I disagree totally with defense counsel  
24 when he says there wasn't a motive because in all the things  
25 that Mr. Quigley spoke about he said there was no motive in  
26 this case.

27 Well, how can you credit that statement or attach any  
28 importance to it when you have the fact, the fact I submit

1 established by the evidence that the defendant said that  
2 there were some people out to kill him?

3 What is going on here? Drug dealing. Defendant is  
4 involved in drugs. He is living in the fast lane at an early  
5 age. He is caught up in it and rightfully or wrongfully he  
6 believes that some people are out to kill him.

7 Defense counsel says well, look at the mindset of the  
8 defendant because the defendant is saying I am going to leave  
9 town.

10 But my response to that is the defendant said that  
11 five hours earlier. Did he leave town?

12 No.

13 He is right back near to where it should be known,  
14 where he lives right outside of that particular place at  
15 11:00 o'clock in town, at 11:00 o'clock at night.

16 Is there motive in this case? Abundant motive and it  
17 supplies the whole basis to why this occurred.

18 And an even more tragic thing than just that a person  
19 was killed is that the defendant killed the wrong people.

20 Why would the defendant think that they were hitmen?

21 Well, as indicated by Mark Ellis, Mark Ellis had only  
22 seen the defendant maybe twice before, so the defendant  
23 inferentially had only seen Mark Ellis twice before. The  
24 defendant thought this was one of the guys that was from  
25 out-of-town.

26 As to whoever the shooter would be, was he insane?  
27 Life in the world of narcotics is a very rough world, whereas  
28 I indicated before life is cheap and you do bold things,

1 report and one that is very obvious that we have a 19 year  
2 old.

3 (To the Bailiff) You can keep the door open, we have  
4 no security risk here in this case.

5 I think there are circumstances in mitigation. We  
6 have a 19 year old who has been involved in community  
7 services not constantly dotted with criminality but that is  
8 one factor of mitigation.

9 Number two, I would indicate that the acts that he  
10 did, and I agree with the jury, were not acts of  
11 premeditation but acting out of fear because of what he  
12 believed were threats upon his own life. I can only  
13 speculate as to whether or not it was a threat because of  
14 some infringement of some turf control of what areas to be  
15 controlled for crack cocaine dealing or not, but there was  
16 some threats; there was some evidence about people from St.  
17 Louis or someone from state prison.

18 In any event, it appeared the defendant was interested  
19 in getting a gun.

20 Here is a bright, articulable person that should never  
21 have been near a gun. He deserved to be near a computer or  
22 with a pen.

23 Those are the circumstances.

24 Now, the circumstances in aggravation appeared to be  
25 factors that his juvenile probation was unsatisfactory under  
26 California rule 421(b)(5). In 1980 he was--petition was,  
27 sustained as to an auto theft and he was placed on probation.

28 On October 1st, 1981, he committed a grand theft from

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Confidential

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